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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,337	09/25/2003	Chris Sondrup	T9029.CON.CIP	5663

7590 06/01/2004

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EXAMINER

HARTMANN, GARY S

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 06/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/671,337	Applicant(s) SONDRUP, CHRIS	
	Examiner Gary Hartmann	Art Unit 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 17-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>01052004</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-16, drawn to a utility access device, classified in class 404, subclass 26.
 - II. Claims 17-21, drawn to a method for adjusting, classified in class 404, subclass 72.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product could be installed without rotating.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Garron Hobson on May 24, 2004 a provisional election was made with traverse to prosecute the invention of I, claims 1-16. Affirmation of this election must be made by applicant in replying to this Office action. Claims 17-21 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Milo et al. (U.S. Patent 5,899,629) in view of Frame (U.S. Patent 1,639,495). Milo et al. discloses a utility access device having elongated upper (30) and lower (40) sleeves telescopically coupled to one another (Figure 2). There is a cover (19), but there are no rings placed between the sleeves and the cover. Frame teaches the inclined upper edge on a sleeve (35, for example) with an angled ring (34, for example) rotatably disposed thereon (Figure 6, for example). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the inclined upper edge and angled ring of Frame with the device of Milo et al. in order to ease installation to conform to an inclined surface, as taught by Frame.

Milo et al. teaches the enlarged portion (42) formed at the lower end of the lower sleeve.

There is a flange (34) at the lower end of the upper sleeve.

Frame teaches the shoulder (bottom of 37, Figure 9, for example) to optionally circumscribe the angled ring and abut the upper end of the sleeve upon which it is disposed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used this configuration in order to better support a telescoping device, in accordance with the teaching of Frame.

The structure of Frame meets the recitation of socket and protrusion.

The lower sleeve of Milo et al. is slidable within the upper sleeve (Figure 2).

Frame includes optional adaptor rings. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the adaptor rings of Frame in order to further increase height and/or angle of the apparatus.

Milo et al. does not teach screw threads; however, it is well known to use threads on telescoping devices. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used threads on the device of Milo et al. in order to obtain an infinitely adjustable, secure device, as is well known in the art.

Regarding the limitation of a valve, switch or meter, all are well known to use with access devices. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used Milo et al./Frame with any of these in order to provide access thereto, as is common practice.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Hartmann whose telephone number is 703-305-4549. The examiner can normally be reached on Monday through Friday, 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3671

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, consisting of a stylized 'G' followed by a horizontal line and a small flourish.

Gary Hartmann
Primary Examiner
Art Unit 3671

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